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JUAN MANUEL ANDAZOLA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JUAN MANUEL ANDAZOLA)
Petitioner,) Case No.
vs.) PETITION FOR WRIT OF
JEANNE S. WOODFORD, Director) WRIT OF HABEAS CORPUS
of the California Department of)
Corrections, and Richard Kirdland,)
Warden, Pelican Bay State Prison.)
Respondent.) (28 U.S.C. §2254)

TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA:

Petitioner JUAN MANUEL ANDAZOLA, through his counsel, files this writ of habeas corpus pursuant to 28 U.S.C. §2254 *et seq.*, and alleges as follows:

I.

Petitioner is unlawfully confined and restrained of his liberty at Pelican Bay State Prison in Crescent City, California, by Jeanne S. Woodford, Director of the California Department of Corrections, and Richard Kirkland, Warden, Pelican Bay State Prison in Crescent City California.

1
2 II.

3 Petitioner is confined pursuant to the judgment of the California Superior
4 Court in and for the County of Contra Costa in case number 0502214189.
5

6 III.

7 On October 8, 2002, an information was filed in Contra Costa County
8 Superior Court against appellant alleging that on April 3, 2002, appellant committed
9 the following offenses:

10 **Count One:** Penal Code section 187/664, subdivision (a), attempted wilful,
11 deliberate and premeditated murder of Ramiro Pichardo.

12 Firearm enhancements were also alleged under Penal Code sections 12022.5,
13 subdivision (a)(1) [personal use of a firearm] and 12022.53, subdivisions (b),(c), and
14 (d) [personal use and intentional discharge of a firearm causing great bodily injury
15 and death.].¹ (CT 156, 157.)

16 The information was amended to reflect an additional enhancement under
17 Penal Code section 12022.7, subd. (b) [great bodily injury]. (CT 535; 761, 763.)

18 **Count Two:** Penal Code section 245, subdivision (a)(2), assault with a
19 firearm upon Ramiro Pichardo.

20 An enhancement for great bodily injury was also alleged as to this count under
21 Penal Code section 12022.7, subdivision (b). (CT 156-7.)

22 A second enhancement on Count Two was added on the first day of trial
23 alleging a firearm enhancement under Penal Code section 12022.5, subd. (a)(1). (CT
24 507; RT 42.)

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26
27

¹The “causing death” language was ultimately stricken from the information.
28 (RT 209.)

IV.

Following a jury trial, on September 18, 2003, petitioner was found guilty of both attempted premeditated murder and assault with a firearm. All enhancements were found true. (CT 88-90, 689.)

V.

On December 5, 2003, petitioner was sentenced to life with the possibility of parole on Count One with an additional consecutive sentence of 25 years to life for the enhancement pursuant to Penal Code section 12022.53, subd. (d). The remaining enhancements as to Count One were stricken for purposes of sentencing. A concurrent three-year term for Count Two was stayed pursuant to Penal Code section 654. The enhancements on Count Two were stricken for purposes of sentencing. (CT 716.)

VI.

A timely notice of appeal was filed on December 5, 2003. (CT 722.) On direct appeal, petitioner raised several issues:

- I. THE EVIDENCE IS INSUFFICIENT TO SUPPORT A VERDICT THAT APPELLANT SHOT RAMIREZ
- II. DUE PROCESS PRINCIPLES REQUIRE THAT APPELLANT'S CONVICTION BE REVERSED AS THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT THE SHOOTING WAS WILLFUL, DELIBERATE AND PREMEDITATED
- III. THE COURT'S REFUSAL TO GIVE THE DEFENSE PINPOINT INSTRUCTION REGARDING NENE'S PHONE CALLS TO PICHARDO DEPRIVED APPELLANT OF HIS RIGHTS TO PRESENT A DEFENSE AND TO DUE PROCESS

VII

The judgment of conviction in the matter of *People v. Andazola*, No. A104937 was affirmed on February 22, 2006 in an unpublished opinion. A true and correct copy of that decision is attached here as Appendix A.

VIII

1 On October 20, 2005, Petitioner filed a timely writ of habeas corpus in the
2 First District Court of Appeal. Petitioner raised the following claims in his writ of
3 habeas corpus:

4 **I. FAILURE TO DISCLOSE OFFICER SALGADO'S PATTERN OF
FALSIFYING POLICE REPORTS AND THE CRIMINAL INVESTIGATION FOR
HIS CONDUCT VIOLATED PETITIONER'S FEDERAL AND STATE
CONSTITUTIONAL RIGHTS AND REVERSAL IS MANDATED.**

5 **II. OFFICER SALGADO PROVIDED FALSE INFORMATION AT TRIAL
AND RELIEF IS THEREFORE MANDATED UNDER PENAL CODE SECTION
1473.**

6 IX

7 The court of Appeal summarily denied the writ of habeas corpus on February
8 22, 2006. A true and correct copy of that decision is attached here as Appendix B.

9

10 XI

11

12 On April 3, 2006, a timely petition for review was filed in the California
13 Supreme Court. Petitioner raised the following claims in his petition for review:

14 **I. DUE PROCESS PRINCIPLES REQUIRE THAT APPELLANT'S
CONVICTION BE REVERSED AS THE EVIDENCE WAS
INSUFFICIENT TO PROVE THAT THE SHOOTING WAS
WILLFUL, DELIBERATE, AND PREMEDITATED**

15 **II. THE COURT'S REFUSAL TO GIVE THE DEFENSE PINPOINT
INSTRUCTION REGARDING NENE'S PHONE CALLS TO PICHARDO
DEPRIVED APPELLANT OF HIS RIGHTS TO PRESENT A DEFENSE
AND TO DUE PROCESS**

16 X

17 On June 14, 2006 the court denied review without comment. A true and
18 correct copy of the order is attached as Appendix C.

19 XI

20

21 On April 5, a timely petition for writ of habeas corpus was filed in the
22 California Supreme Court .

23 XII

24 Petitioner raised the following claims in his petition for writ of habeas corpus:

I. FAILURE TO DISCLOSE OFFICER SALGADO'S PATTERN OF FALSIFYING POLICE REPORTS AND THE CRIMINAL INVESTIGATION FOR HIS CONDUCT VIOLATED PETITIONER'S FEDERAL AND STATE CONSTITUTIONAL RIGHTS AND REVERSAL IS MANDATED

- A. The Prosecution Had a Duty to Disclose Information About Salgado's Pattern of Falsifying Police Reports As Well As Information About the Investigation into Salgado's Misconduct
 - B. Evidence of Salgado's False Police Reports and Investigation into His Fabrication of Evidence Was "Material" As His Credibility Was the Lynchpin of the Prosecution's Case
 - C. There Is a Reasonable Probability That the Outcome of the Trial Would Have Been Different Had the Defense Known of the Wrongly Withheld Information

II. OFFICER SALGADO PROVIDED FALSE INFORMATION AT TRIAL AND RELIEF IS THEREFORE MANDATED UNDER PENAL CODE SECTION 1473.

XIII

On February 14, 2007 the petition was denied without comment. A true and correct copy of the order is attached as Appendix D.

XIV

Petitioner has been represented by present counsel at all states of the state court proceedings.

xv

Other than the above described appeals and petitions, petitioner has not filed any petition, application or motion with respect to this conviction in any court, state or federal

xvi

The facts of this case are stated in the Memorandum of Points and Authorities in Support of this Petition for Writ of Habeas Corpus, filed with this Petition, and are incorporated by reference as if fully set forth here.

1 XVII
2**FIRST GROUND FOR ISSUANCE OF WRIT:**3 DUE PROCESS PRINCIPLES UNDER THE FIFTH AND FOURTEENTH
4 AMENDMENTS TO THE UNITED STATES CONSTITUTION5 The judgment against petitioner was rendered in violation of his constitutional
6 rights of due process as guaranteed by the Fifth and Fourteenth Amendments. The
7 trial record did not disclose substantial evidence from which a reasonable trier of fact
8 could find that petitioner was the shooter. (*Jackson v. Virginia* (1979) 443 U.S. 307,
9 31, 19.)10 The state proceeding resulted in a decision that was based on a determination
11 of the facts that is directly contradicted by the evidence presented in the state court
12 proceeding and is contrary to federal law. (28 U.S.C. sec. 2254, subd. (d)(1), (2).)
13 These legal grounds for issuance of a writ in this case are set forth in detail in the
14 Memorandum of Points and Authorities in Support of the Petition for Writ of Habeas
15 Corpus, filed with this Petition, and are incorporated herein by reference.16 XVIII
17**SECOND GROUND FOR ISSUANCE OF WRIT:**18 DUE PROCESS PRINCIPLES UNDER THE FIFTH AND FOURTEENTH
19 AMENDMENTS TO THE UNITED STATES CONSTITUTION20 The judgment against petitioner was rendered in violation of his constitutional
21 rights of due process as guaranteed by the Fifth and Fourteenth Amendments. The
22 trial record did not disclose substantial evidence from which a reasonable trier of fact
23 could find that petitioner premeditated and deliberated beyond a reasonable doubt .
24 (*Jackson v. Virginia* (1979) 443 U.S. 307, 31, 19.)25 The state proceeding resulted in a decision that was based on a determination
26 of the facts that is directly contradicted by the evidence presented in the state court
27 proceeding and is contrary to federal law. (28 U.S.C. sec. 2254, subd. (d)(1), (2).)
28 These legal grounds for issuance of a writ in this case are set forth in detail in the

1 Memorandum of Points and Authorities in Support of the Petition for Writ of Habeas
2 Corpus, filed with this Petition, and are incorporated herein by reference.

3

4 XIX

5 **THIRD GROUND FOR ISSUANCE OF WRIT:**

6 **DUE PROCESS PRINCIPLES UNDER THE FIFTH AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION**

7

8 The judgment against petitioner was rendered in violation of his constitutional
9 rights of due process as guaranteed by the Fifth and Fourteenth Amendments. The
10 trial court's failure to instruct the jury with the defense pinpoint instruction was
11 prejudicial and rendered the trial so fundamentally unfair as to violate due process.
12 (*Cupp v. Naughten* (1973) 414 U.S. 141, 147; U.S. Constitution, Amend. V, VIV.)

13 The state proceeding resulted in a decision that was contrary to clearly
14 established federal precedent and was based on a determination of the facts that is
15 directly contradicted by the evidence presented in the state court proceeding and is
16 contrary to federal law. (28 U.S.C. sec. 2254, subd. (d)(1), (2).) These legal grounds
17 for issuance of a writ in this case are set forth in detail in the Memorandum of Points
18 and Authorities in Support of the Petition for Writ of Habeas Corpus, filed with this
19 Petition, and are incorporated herein by reference.

20

XX

21 **FOURTH GROUND FOR ISSUANCE OF WRIT:**

22 **DUE PROCESS PRINCIPLES AND RIGHT TO CROSS EXAMINE WITNESSES
UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION**

24

25 The judgment against petitioner was rendered in violation of his constitutional
rights as guaranteed by the Fifth, Sixth and Fourteenth Amendments. Furthermore,
26 the state violated the mandate of *Brady v. Maryland* (1963) 373 U.S. 83, by its failure
27 to provide favorable, material, impeaching evidence regarding prosecution witness
28

1 Officer Javier Salgado, and by the state's failure to disclose and correct Officer
2 Salgado's false testimony, which it knew or should have known to be false.

The state proceeding resulted in a decision that was based on a determination of the facts that is directly contradicted by the evidence presented in the state court proceeding and is contrary to federal law. (28 U.S.C. sec. 2254, subd. (d)(1), (2).) These legal grounds for issuance of a writ in this case are set forth in detail in the Memorandum of Points and Authorities in Support of the Petition for Writ of Habeas Corpus, filed with this Petition, and are incorporated herein by reference.

XXI

10 Petitioner has exhausted all remedies provided him under the laws of the State
11 of California. There are no other legal proceedings pending with respect to
12 petitioner's judgment or sentence. The instant petition is the only means available for
13 petitioner to obtain legal redress.

WHEREFORE, petitioner respectfully requests that this Court:

- 15 1. Issue its order to the respondent to show cause to inquire into the legality of
16 petitioner's incarceration;

17 2. Grant petitioner leave to conduct such discovery as has been or shall later
18 be requested by petitioner upon a showing of good cause;

19 3. Direct respondents to file with this court a full and complete copy of the
20 record of all proceedings that occurred in the California courts in connection with
21 this matter;

22 4. Appoint counsel to represent petitioner in connection with these
23 proceedings;

24 5. After full consideration of all issues raised herein, vacate the judgment of
25 conviction and the sentence imposed upon petitioner in Contra Costa Superior Court
26 Case no. 0502214189 and order his immediate release;

1 5. Grant petitioner such further relief as is appropriate and in the interests of
2 justice.

4 DATED: October 19, 2007

Respectfully submitted,

Bobbie Stein

Appearing Specially for Petitioner

JUAN MANUEL ANDAZOLA

VERIFICATION

I, Bobbie Stein, declare:

I am an attorney admitted to practice law before the courts of the State of California and the United States District Court for the Northern District and I have my office in San Francisco County. I am the attorney appearing specially for the petitioner herein and am authorized to file this Petition. Petitioner is unable to make this verification because he is absent from this county and because he is not familiar with all of the facts related to this Petition.

I have read the foregoing Petition for Writ of Habeas Corpus. All of the facts alleged in these document, not otherwise supported by citations to the record, exhibits or other documents, I believe to be true to the best of my own personal knowledge.

13 I declare under penalty of perjury that the foregoing is true and correct to the
14 best of my knowledge. Executed on October 19, 2007 at Oakland, California.

BOBBIE STEIN

PROOF OF SERVICE BY MAIL

I, Bobbie Stein, am over 18 years of age and not a party to the above action. My business address is 503 Dolores Street, Suite 201, San Francisco, California 94110.

On December , 2007, I served copies of the attached petition for writ of habeas corpus on the following people:

I declare under penalty of perjury that the foregoing is true and correct.
Executed this day of December , 2007, in Oakland, California.

Bobbie Stein